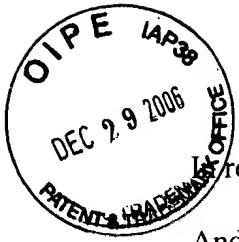


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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inter Patent Application of:

Andrew LAITT

Serial No.: 09/980,084

Filed: May 2, 2002

For: **A METHOD OF PACKAGING GOODS**

) Confirmation No. 8099
)
) Art Unit: 3721
)
) Examiner: Hemant Desai
)
)
)
) Date: December 29, 2006

Mail Stop Appeal Brief

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

REPLY BRIEF TRANSMITTAL

Sir:

Submitted herewith please find a Reply Brief in the above-identified. It is not believed that a fee is due in connection with this filing, however, if such a fee is due, authorization is given to charge or credit any differences of overpayment to Deposit Account No. 23-2185. A duplicate copy of this paper is attached.

Respectfully submitted,

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REPLY BRIEF

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Sir:

The Appellant, through undersigned counsel, presents this Reply Brief in response to the Examiner's Answer mailed October 31, 2006, a second copy of which was subsequently mailed November 30, 2006. The Examiner's Answer was in response to the Appellant's Appeal Brief dated September 14, 2006.

In the Examiner's Answer, the Examiner continues to contend that Kaufman (U.S. Patent 2,835,596) discloses all of the limitations of independent claims 1 and 33 except for: forming a strip a of sealed pouches and inserting the strip into a carton (see page 4, first full paragraph) and the brick-shaped configuration of the pouches (paragraph bridging pages 4 and 5).

Referring to the specification of Kaufman, the Examiner contends on page 10 of the Answer that Kaufman discloses a pouch wherein when "a sealed pouch is placed on the long side face (see figs. 3 – 4), a layer of air is formed above the foodstuff (see col. 2, lines 63-72; col. 3, lines 1 – 2)." However, the part of the specification of Kaufman to which the Examiner refers

states that "when no pressure is applied, the [foodstuff] may be so distributed so that the bag 10 rests on the product, as illustrated in Figure 2" (col. 2, lines 61 – 62, emphasis added). It is clearly illustrated in Figure 2 of Kaufman that the bag is placed on its long side face. However, the specification of Kaufman makes clear that in Figure 2 the bag is resting on the product while in this position. As such, there is not a layer of air formed above the foodstuff. A layer of air is only formed above the foodstuff when pressure is applied to one face of the bag (i.e. the face opposite the one on which is placed on a surface), as described in the specification from col. 2, line 63 to col. 3 line 2, and in Figure 3.

Accordingly, Kaufman does not teach a pouch wherein if the pouch is placed on its long side face, a layer of air is formed above the foodstuff. Hence, Appellant respectfully contends that Kaufman does not disclose all of the claim limitations that the Examiner contends it does. Further, none of the cited references overcome this deficiency in Kaufman. As such, it would not have been obvious for one of skill in the art to combine the cited references to obtain the invention as presently claimed because it is not even possible to combine these references in such a manner.

Although the other references cited in the Examiner's rejection do not overcome the deficiencies of Kaufman described above, Appellant will address the Examiner's combinations of these references with Kaufman for the sake of completeness.

In the pending grounds of rejection, the Examiner contends that it would be obvious to one of skill in the art to combine either Davy (U.S. Patent 3,199,756) or Soubier (U.S. Patent 2,194,451) with Kaufman to obtain the pouches of the present invention formed in a strip for

insertion into a carton (see page 4, first full paragraph). Regarding Soubier, the Examiner now appears to have conceded to Appellant's argument that Soubier teaches away from the present invention, stating that "Examiner is relying on Davy for forming a strip of sealed pouches of flaky material and inserting the strip into a carton" (page 10, paragraph continuing from page 9).

The Examiner argues on page 9 of the Answer that the combination of Kaufman and Davy would be obvious to one of skill in the art mainly because the two references describe analogous art, i.e. a method of packaging foodstuffs into pouches. The Examiner also appears to argue that the fact that simply because Davy teaches a strip of sealed pouches in a carton, that one would be motivated to combine the references.

Davy teaches a method for packaging and dispensing brittle foodstuffs whereby the foodstuffs are sealed into packages in a strip and arranged in a container. A substantial part of the invention in Davy is drawn to the dispensing mechanism, whereby a cutting mechanism (F, as shown in Figure 5) is used to separate the packages as they are dispensed. The dispensing mechanism is specially designed so that the packages are "thus suspended in space so as to avoid crushing of the packages and their fragile contents by pressure imposed thereon" (col. 1, lines 48 – 50). The description in Davy makes it clear that the packages of the invention must be handled very carefully to avoid damage to their contents.

Even if, *arguendo*, Kaufman described all of the limitation that the Examiner contends it does, it would not have been obvious to one of skill in the art to combine Kaufman and Davy to obtain the present invention. Kaufman describes a method for packaging marshmallows that prevents them from deforming and sticking to one another. As marshmallows are not brittle, one

of skill in the art would not be motivated to combine Kaufman with Davy, because Davy teaches that the packages must be handled with a level of care not required for packaging of marshmallows.

Finally, the Examiner contends on page 10 of the Answer that although the combination of Kaufman and Davy does not teach or suggest pouches with a brick shaped conformation, that this limitation would be obvious to one of skill in the art from European Patent Application 0302413 (EP '413).

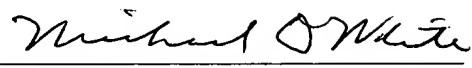
EP '413 teaches an unrelated brick shaped container for packaging of liquids (see col. 1, lines 14 – 16 and col. 3, lines 39 – 40). The Examiner contends the statement in EP '413 stating that the described invention provides improved handling strength in liquid packaging containers (col. 8, lines 32 – 33) would be enough to motivate one of skill in the art to combine this reference with Kaufman and Davy to obtain the present invention for the packaging of dry, brittle foodstuffs. This argument appears to fly in the face of the Examiner's argument regarding the combination of Kaufman and Davy. The Examiner finds the combination of Kaufman and Davy to be obvious almost solely because the two references describe analogous art, but is able to also find their further combination with EP '413 to be obvious in spite of its description of a completely separate art. Appellant respectfully contends that one of skill in the art in the foodstuff packaging industry (where damage to contents is of primary concern) would not look for guidance in a document describing the packaging of liquids (where damage to the container is of primary concern).

Even if, *arguendo*, one of skill in the art in the foodstuff packaging industry would look to EP '413 for guidance, he or she would not find the teachings necessary to obtain the present invention. EP '413 teaches that the strength of a liquid packing container can be improved by moving the seam by which the container is sealed to a position closer to one of the narrow walls of the container (see col. 7, lines 11 – 16). In essence, EP '413 does not teach that brick shaped containers *per se* are structurally strong. Instead, EP '413 teaches that brick shaped containers with a longitudinal seam near one of the corners of the container are an improvement over previous brick shape containers. One of skill in the art, upon reading EP '413, would not have guidance towards forming the present invention, a brick shaped pouch with pleats at each end of the pouch, because the structural components of the two are completely unrelated.

For the reasons set forth above and in the Appeal Brief, the Appellant respectfully urges the reversal of the outstanding rejection.

Respectfully submitted,

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